IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9643 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHWINBHAI DHIRABHAI BARIA - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
MR LR PUJARI GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 19/12/2007

ORAL JUDGMENT

1.0 By way of this petition, the detenu has challenged the order of detention dated 13.02.2007 passed by District Magistrate, Godhra

under the provisions of sub-Section (2) of Section 3 of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as the 'PASA Act').

2.0 Learned Advocate for the detenu has invited my attention to the order of detention dated 13.02.2007 by which detenu was arrested and sent to District Jail, Rajkot as well as to the grounds supplied therein. As the grounds of detention, four criminal cases are shown as registered against the detenu which pertains to 'Prohibition'.

2.1 He has further submitted that in the order of detention it was stated that the detenu is carrying on anti-social activities and on the basis of four offences of 'bootlegging' registered against the detenu, he was termed as 'Bootlegger' within the meaning of Section 2(b)of the P.A.S.A. Act. It was also stated in the impugned order that as the said bootlegging activities of the detenu are dangerous and

affecting maintenance of 'public order' and 'public health', order of detention has been passed against him.

2.2 He has submitted that on the basis of four criminal cases registered against the detenu, it cannot be said that the activities of the detenu has become prejudicial to the maintenance of 'Public Order'. In support of his case he has placed reliance on a decision of the Hon'ble Apex Court in the case of ***"Arun Ghosh Vs. State of West Bengal"*** 1970(1)SCC 98 wherein the Hon'ble Apex Court at Para-3 held as under,

> "...that disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. There is no formula by which one case can be distinguished from another."

2.3 Similar principle has been followed by the Hon'ble Apex Court in the case of ***"Darpan @ Dharban Kumar Sharma Vs. State of Tamil Nadu and Ors."*** reported in (2003)2 SCC 313 and by this Court in the case of ***"Surajsinh @ Suru @ Suresh Lallusinh Rajput Vs. State of Gujarat and Ors."*** reported in 2004(1)GLH 454.

3.0 The learned A.G.P. for respondent-detaining Authority has supported the order of detention as well as grounds stated therein and has contended that the Authority has passed the impugned order after taking into consideration all the facts and circumstances of the case, and hence, no case is made out calling for interference of this Court.

4.0 As a result of hearing and perusal of the record it appears that in this case the only material is four criminal cases registered against the detenu and on the basis of that it cannot be said that the activity of the detenu

has become a threat to the maintenance of 'public order' and 'public health'. The offences registered against the detenu pertains to prohibition to which I have already made reference in my earlier part of the judgment. Mere involvement of detenu in bootlegging activities may not amount to dangerous activity by detenu and mere mention of them unless supported by any evidence cannot be said to be material and germane for the purpose of arriving at subjective satisfaction that the activity of the detenu is prejudicial to the maintenance of 'public order' and 'public health'.

4.1 I am, therefore, of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have considered factual and legal aspects emerging from the record and also considered the rival submissions and the facts of the case and also considered the judgment of the Hon'ble Apex Court in the case of ***"Arun Ghosh"***(Supra) as well as

"Darpan @ Dharban Kumar Sharma"(Supra) and the judgment of this Court in the case of ***"Surajsinh @ Suru @ Suresh Lallusinh Rajput*** (Supra). In view of the facts and circumstances of the present case and in view of the ratio laid down in the decision mentioned above, the order of detention cannot be sustained and it deserves to be quashed and set aside.

5.0 In the result, this petition is allowed. The order of detention dated 13.02.2007 passed by District Magistrate, Godhra is hereby quashed and set aside. The detenu is, therefore, ordered to be set at liberty forthwith, if he is not required in connection with any other case by the Authority. Rule is made absolute. Direct service is permitted.

(M.D. Shah,J.)

Umesh/